



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 15 2013

OFFICE OF
WATER

The Honorable Tom Cotton
House of Representatives
Washington, D.C. 20515

Dear Congressman Cotton:

Thank you for your letter of March 12, 2013, to the U.S. Environmental Protection Agency expressing concerns about the EPA's recent release of data on concentrated animal feeding operations pursuant to the Freedom of Information Act.

The EPA treats with utmost seriousness the importance of protecting the privacy of Americans recognized by the FOIA, the Privacy Act, and the EPA's Privacy Policy. In recognition of the concerns raised by the animal agricultural industry, the EPA engaged in an exhaustive review of the EPA's FOIA response to determine whether, as the agency had understood, the information the EPA released is publicly available, and whether any revisions to the agency's determination to release the information is warranted under the privacy exemption (Exemption 6) of the FOIA.

As a result of this comprehensive review, we have determined that, of the twenty-nine states¹ for which the EPA released information, all of the information from nineteen of the states is either available to the public on the EPA's or states' websites, is subject to mandatory disclosure under state or federal law, or does not contain data that implicated a privacy interest. The data from these nineteen states is therefore not subject to withholding under the privacy protections of FOIA Exemption 6. The EPA has determined that some personal information received from the ten remaining states² is subject to Exemption 6.

The EPA has thoroughly evaluated every data element from each of these ten states and concluded that personal information – i.e., personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters – implicates a privacy interest that outweighs any public interest in disclosure.

We amended our FOIA response to redact portions of the data provided by these ten states. The redacted portions include telephone numbers, email addresses, and notations that relate to personal matters. They also include the names and addresses of individuals (as opposed to business facility names and locations, though facility names that include individuals' names have been redacted). We believe that this amended FOIA response continues to serve its intended purpose to provide basic location and other information about animal feeding operations, in order to serve the public interest of ensuring that the EPA effectively implements its programs to protect water quality, while addressing the privacy interests of the agricultural community.

¹ The twenty-nine states are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, Maine, Michigan, Missouri, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

² The ten remaining states are: Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio, and Utah.

The EPA has delivered the amended data to the FOIA requestors, and has also provided copies to representatives of the animal agricultural industry. In addition, the EPA requested that the previous data releases be returned to the agency, and all the original requestors subsequently complied with this request. The agency has also asked agricultural stakeholder groups to report to the EPA if any activities happen on their farms that they believe directly resulted from this FOIA release.

The agency is also working to ensure that any future FOIA requests for similar information are reviewed carefully to ensure that privacy-related information is protected to the extent required by FOIA. More specifically, key leaders in our Office of Environmental Information and FOIA experts are developing training for all agency employees, including those in the Office of Water (OW), on the agency's obligations under the FOIA and responding to FOIA requestors. The training will focus on all aspects of processing a FOIA request, including how to properly safeguard information that may be exempt from mandatory disclosures, and will become a regular practice to agency personnel.

With respect to your questions about the process used to collect information from animal feeding operations, as your letter reflects, the EPA initially proposed a rule that would have required CAFO owners to submit information about their operations to the agency. The agency later withdrew this rule and opted instead to work with states, which were already collecting this information, to gather the data. As part of this effort, the EPA established a Memorandum of Understanding (MOU) with the Association of Clean Water Administrators related to the agency voluntarily collecting information about animal feeding operations from the states. The EPA contacted states and gathered and released data from 29 state agencies, all of which have the authority to regulate animal feeding operations. The EPA's request to states only pertained to information on permitted and unpermitted CAFOs. Some states also provided information on additional animal feeding operations. The data was voluntarily submitted to the EPA in various forms (e.g., spreadsheets, public websites, databases, etc.). At the time of submission, the EPA informed each state agency that any records the EPA received would be subject to the Freedom of Information Act. At no time did the EPA withhold or threaten to withhold funding from state agencies that did not submit data.

As also noted in your letter, the agency did receive comments from the U.S. Departments of Homeland Security and Agriculture on the EPA's proposed animal feeding operation data collection rule. The EPA did not provide a formal response to these comments because they were received as part of the inter-agency review process. As mentioned above, the EPA later withdrew the proposed rule.

As stated by the EPA in its Federal Register notice withdrawing the data collection rule, "collecting existing information, evaluating it, and compiling it in one format will better inform the agency" in implementing its obligation to learn about the universe of animal feeding operations and protect the nation's waters under the Clean Water Act. The EPA has not determined how the data gathered will be used internally or externally. The agency commits to working together with our federal partners, industry and other stakeholders to determine the best approaches for working with the state data provided. To give you some background and context, in September 2008, the United States Government Accountability Office issued a report to congressional requestors, recommending that the EPA "should complete the agency's effort to develop a national inventory of permitted CAFOs..."³ The report also stated that "despite its long-term regulation of CAFOs, the EPA has neither the information it needs to

³ U.S. Gov't Accountability Office, *Concentrated Animal Feeding Operations—EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality*, GAO-08-944 5 (2008), page 48.

assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.”

Again, thank you for your letter. The EPA is committed to conducting its activities with the highest legal and ethical standards and in the public interest. If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator